



Exempt Action Final Regulation Agency Background Document

Approving authority name	State Air Pollution Control Board
Primary action	Article 52, 9 VAC 5-40
Secondary action(s)	9 VAC 5-20-21
Regulation title	Regulations for the Control and Abatement of Air Pollution
Action title	Emission Standards for Stationary Sources Subject to Case-by-Case BART Determinations (Rev. G05)
Document preparation date	May 31, 2007

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006(A) of the of the Administrative Process Act (APA) (townhall.state.va.us/dpbpages/dpb_apa.htm), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act (leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-4100), the *Virginia Register Form, Style, and Procedure Manual* (legis.state.va.us/codecomm/register/download/styl8_95.rtf), and Executive Orders 21 (02) and 58 (99) (governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html)

Summary

Please provide a brief summary of the regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment.

The regulation applies to sources subject to federal Best Available Retrofit Technology (BART) requirements. BART is an emission limitation based on the degree of reduction achievable through application of the best system of continuous emission reduction for each pollutant emitted by an existing stationary facility established on a case-by-case basis taking into consideration available technology, costs of compliance, energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. A BART-eligible source has the potential to emit 250 tons or more of a visibility-impairing air pollutant (sulfur dioxide, nitrogen oxides, particulate matter, volatile organic compounds, and ammonia), was in place between August 7, 1962 and August 7, 1977, and falls within one or more of 26 source categories. BART is required for any BART-eligible source which emits any air pollutant which may reasonably be anticipated to cause or contribute to visibility impairment in any federal Class I area.

In addition to describing applicability, the regulation describes exemptions from control, and defines terms unique to the rule. A standard for regional haze pollutants is established. Criteria and procedures for

making BART determinations are described. State standards for visible emissions, fugitive dust/emissions, odor, and toxic pollutants are referenced. Compliance requirements, including testing schedules, are specified. Test methods and procedures for determining compliance are included. Equipment necessary to monitor compliance are to be installed, calibrated, maintained, and operated. Records of monitoring and test results are to be gathered, maintained, and reported at certain intervals. In the event of facility and control equipment maintenance or malfunction, certain procedures must be followed. Finally, references are provided for state requirements for registration and permits.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On May 23, 2007, the State Air Pollution Control Board adopted final amendments to regulations entitled "Regulations for the Control and Abatement of Air Pollution", specifically, Emission Standards for Stationary Sources Subject to Case-by-Case BART Determinations (9 VAC 5 Chapter 40, Article 52). The regulation amendments are to be effective on August 1, 2007.

The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 c of the Administrative Process Act because they are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent U.S. Environmental Protection Agency (EPA) regulations.

In adopting these amendments, the board affirmed that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

Additional Information

Please indicate that the text of the regulation, the reporting forms the agency intends to incorporate or use in administering the proposed regulation, a copy of any documents to be incorporated by reference are attached.

Please state that the Office of the Attorney General (OAG) has certified that the agency has the statutory authority to promulgate the regulation and that it comports with applicable state and/or federal law.

If the exemption claimed falls under § 2.2-4006 A 4 c of the APA please identify the federal law or regulations being relied upon for the final agency action.

The text of the regulation is attached.

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare. Letters providing written assurance from the Office of the Attorney General that (i) the Board has statutory authority to promulgate the final regulation amendments and (ii) the amendments qualify as an exemption under § 2.2-4006 A 4 c of the Administrative Process Act are available upon request.

Section 169(A) of the federal Clean Air Act addresses visibility protection for federal class I areas. 40 CFR 51.166 requires that state plans (SIPs) contain emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality. Visibility is specifically addressed in 40 CFR 51.166(o) and (p). In 1999, EPA published a final rule to address regional haze (64 FR 35714), including case-by-case determination of Best Available Retrofit Technology (BART). BART is required for any BART-eligible source that emits any air pollutant that may reasonably be anticipated to cause or contribute to visibility impairment in any Class I area. Accordingly, for stationary sources meeting these criteria, states must address the BART requirement when developing regional haze SIPs.

On July 6, 2005 (70 FR 39103), EPA promulgated final amendments to the regional haze regulations (40 CFR 51.302 and 51.308), and to provide BART determination guidance (Appendix Y to 40 CFR Part 51). The purpose of the guidelines is to assist states as they identify which of their BART-eligible sources should undergo a BART analysis, and select controls. Virginia must now adopt these requirements in order to have a legal basis for the issuance of BART permits.

Family Impact

Assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

It is not anticipated that these regulation amendments will have a direct impact on families. However, there will be positive indirect impacts in that the regulation amendments will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in related health and welfare problems.

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